

Rule 25. Substitution of parties upon death, incompetency or transfer of interest; abatement.

(a) Death. – No action abates by reason of the death of a party if the cause of action survives. In such case, the court, on motion at any time within the time specified for the presentation of claims in G.S. 28A-19-3, may order the substitution of said party's personal representative or collector and allow the action to be continued by or against the substituted party.

(b) Insanity or incompetency. – No action abates by reason of the incompetency or insanity of a party. If such incompetency or insanity is adjudicated, the court, on motion at any time within one year after such adjudication, or afterwards on a supplemental complaint, may order that said party be represented by his general guardian or trustee or a guardian ad litem, and, allow the action to be continued. If there is no adjudication, any party may suggest such incompetency or insanity to the court and it shall enter such order in respect thereto as justice may require.

(c) Abatement ordered unless action continued. – At any time after the death, insanity or incompetency of a party, the court in which an action is pending, upon notice to such person as it directs and upon motion of any party aggrieved, may order that the action be abated, unless it is continued by the proper parties, within a time to be fixed by the court, not less than six nor more than 12 months from the granting of the order.

(d) Transfer of interest. – In case of any transfer of interest other than by death, the action shall be continued in the name of the original party; but, upon motion of any party, the court may allow the person to whom the transfer is made to be joined with the original party.

(e) Death of receiver of corporation. – No action against a receiver of a corporation abates by reason of his death, but, upon suggestion of the facts on the record, it continues against his successor or against the corporation in case a new receiver is not appointed and such successor or the corporation is automatically substituted as a party.

(f) Public officers; death or separation from office. –

(1) When a public officer is a party to an action in his official capacity and during its pendency dies, resigns or otherwise ceases to hold office, the action does not abate and his successor is automatically substituted as a party. Proceedings following the substitution shall be in the name of the substituted party, but any misnomer not affecting substantial rights of the parties shall be disregarded. An order of substitution may be entered at any time, but the omission to enter such an order shall not affect the substitution.

(2) When a public officer sues or is sued in his official capacity, he may be described as a party by his official title rather than by name; but the court may require his name to be added.

(g) No abatement after verdict. – After a verdict is rendered in any action, the action does not abate by reason of the death of a party, whether or not the cause of action upon which it is based is a type which survives. (1967, c. 954, s. 1; 1977, c. 446, s. 3.)